

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
STATE BOARD OF ELECTIONS

IN THE MATTER OF:)
INVESTIGATION OF)
ELECTION IRREGULARITIES) **ORDER ON CONTEST FOR**
AFFECTING COUNTIES) **JUDICIAL DISTRICT 16B, SEAT 2**
WITHIN THE 9TH)
CONGRESSIONAL DISTRICT)

THIS MATTER CAME BEFORE THE STATE BOARD OF ELECTIONS ("State Board") upon the State Board's own motion at a public evidentiary hearing held February 18, 2019, through February 21, 2019, in the manner prescribed by a Notice of Hearing and Amended Order of Proceedings issued February 4, 2019. The State Board voted unanimously to order new elections for North Carolina's 9th Congressional District, Bladen Soil and Water Conservation District Supervisor and Bladen County Commissioner (District 3). The State Board continued its hearing as to Seat 2 on the District Court in Judicial District 16B in Robeson County until March 4, 2019, to allow agency staff additional time to review matters distinct to that contest.

At the evidentiary hearing, judicial candidate Vanessa E. Burton was represented by attorneys William Gilkeson Jr., and Sabra Faires, and judicial candidate Jack H. Moody Jr. was represented by attorney Timothy R. Haga.

After receiving testimony and other evidence, and after reviewing written submissions and hearing arguments from the parties, including a presentation of agency staff, the State Board finds, concludes and orders the following:

I. FINDINGS OF FACT

1. On March 13, 2019, the State Board entered a written Order in this Matter as to North Carolina’s 9th Congressional District, Bladen Soil and Water Conservation District Supervisor and Bladen County Commissioner (District 3). *See Order, In re Investigation of election irregularities affecting counties within the 9th Congressional District,* (S.B.E., Mar. 13, 2019) (herein the “Order”).

2. The Procedural History and Findings of Fact contained in Paragraphs 1 through 146 of the Order are hereby incorporated fully herein.

3. In the 2018 General Election, Judicial District 16B, Seat 2 (the “Judicial Contest”), was located wholly within Robeson County, while North Carolina’s 9th Congressional District included a portion of Mecklenburg County; all of Union, Anson, Richmond, Scotland, and Robeson Counties; and substantial portions of Cumberland and Bladen Counties.

4. The 2018 General Election candidates in the Judicial Contest were the Democratic nominee, Vanessa E. Burton (“Burton”), and the Republican nominee, Jack H. Moody (“Moody”).

5. After Election Day and a subsequent recount, unofficial results for the Judicial Contest were as follows: Burton (15,382) and Moody (15,315). The apparent margin of victory was 67 votes in Burton’s favor.

6. Due to delays associated with the recount, results for the Judicial Contest were not available to the State Board on the date designated by statute for canvass of judicial races, November 27, 2018.

7. On November 30, 2018, the State Board withheld certification of the Judicial Contest pending an evidentiary hearing to determine whether the election could be determined without taint of fraud or corruption and without irregularities that may have changed the results.

8. The State Board conducted an evidentiary hearing on issues with a bearing on this matter from February 18, 2019, through February 21, 2019, and reconvened on March 4, 2019, to hear additional evidence and rule on the Judicial Contest.

9. While evidence incorporated herein (*see* Paragraph 2, *supra*) established that Leslie McCrae Dowless Jr. and those working with him violated election laws and caused irregularities that affected the reliability of results for certain elections, the evidence does not show that the same conduct affected the reliability of the result for the Judicial Contest in Robeson.

10. In Robeson County, Dowless and/or those associated with him worked on behalf of Republican candidates for North Carolina's 9th Congressional District and N.C. House District 46, which is located in part of Robeson County and part of Columbus County. Neither of the candidates in the Judicial Contest hired Dowless or his associates.

11. Within the jurisdiction of House District 46, workers associated with Dowless witnessed 58 ballots, nearly all of which appeared to be from voters in the Robeson County precinct of St. Pauls.

12. According to unofficial results, of the 95 absentee-by-mail ballots cast by voters in the St. Pauls precinct for the Judicial Contest, Moody received 63 votes and Burton received 32 votes. The Republican nominees for North Carolina's 9th Congressional District and for N.C. House District 46 received 65 and 67 absentee votes, respectively, in the St. Pauls precinct.

13. Evidence of irregularities or misconduct regarding ballot security, the elections office, and the administration of one-stop early voting was established in Bladen County, but was not similarly established in Robeson County.

14. The absence of substantial evidence to support a finding of irregularities, misconduct, or fraud affecting the Judicial Contest distinguishes that race from the factors affecting North Carolina's 9th Congressional District, Bladen Soil and Water Conservation District Supervisor, and Bladen County Commissioner (District 3).

15. The results for the Judicial Contest are not tainted by fraud sufficient to cast doubt on the fairness of that election.

II. CONCLUSIONS OF LAW

16. The Conclusions of Law contained in Paragraphs 147 through 153 of the Order, *In re Investigation of election irregularities, supra*, are incorporated fully herein.

17. In the State Board's inquiry, “[e]very reasonable presumption will be indulged in favor of the validity of an election,” and “an election will not be disturbed for irregularities where it is not shown such irregularities are sufficient to alter the result.” *Gardner v. City of Reidsville*, 269 N.C. 581, 585 (1967) (internal citations omitted); see, e.g., *In re Appeal of Ramseur*, 120 N.C. App. 521, 525 (1995).

18. When substantial evidence confirms the occurrence of irregularities or improprieties, but it is not possible to quantify the precise number of affected votes, the State Board may proceed to determine whether the occurrence of such irregularities or improprieties was so extensive that they taint the results in that contest and cast doubt on its fairness. Compare G.S. §§ 163-182.13(a)(1) through 163-182.13(a)(3) with G.S. § 163-182.13(a)(4).

19. The State Board possesses authority to determine whether substantial evidence supports the remedy of a new election in one contest, but not in another. See, e.g., *Sharpley v. State Bd. of Elections*, 23 N.C. App. 650, 652 (1974) (“the State Board had the authority to order a new election for the five offices of Town Commissioner . . . without at the same time ordering a new

election for the offices of Mayor and Treasurer”).

20. The remedy of a new election is imposed only upon the agreement of four members of the State Board, G.S. § 163-182.13(a), and four members have not agreed to a new election in the Judicial Contest.

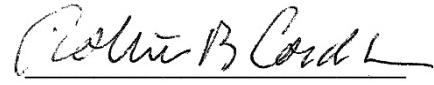
21. The State Board possesses jurisdiction over contests for district court and is the canvassing authority for the Judicial Contest. *See* G.S. § 163A-1171(b)(4).

22. Three members having voted to certify the Judicial Contest, the certificate of election shall be issued 10 days after entry of this Order, pursuant to G.S. § 163A-1184(b)(1).

It is, therefore, ORDERED:

Results for the 2018 General Election for Seat 2 on the District Court in Judicial District 16B having been canvassed, with Vanessa E. Burton having prevailed over Jack H. Moody Jr., the Executive Director of the State Board of Elections shall issue Burton a certificate of election on the tenth day after entry of this Order, consistent with G.S. § 163A-1184(b)(1).

This the 29th day of March, 2019.



Robert B. Cordle
Robert B. Cordle
Chair

CERTIFICATE

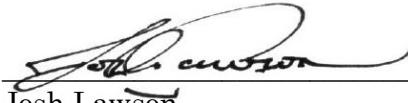
I, Josh Lawson, general counsel to the North Carolina State Board of Elections, do hereby certify that agency staff posted the foregoing document(s) in the manner directed by Paragraph 6 of the Amended Order of Proceedings issued February 4, 2019, and transmitted the same by Federal Express delivery to the parties indicated below, enclosing also a copy of the State Board's Order of March 13, 2019, in this Matter:

[https://dl.ncsbe.gov/index.html?prefix=State Board Meeting Docs/Constituional District 9 Portal/](https://dl.ncsbe.gov/index.html?prefix=State%20Board%20Meeting%20Docs/Constituional%20District%209%20Portal/)

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This the 29th day of March, 2019.



Josh Lawson,
General Counsel
N.C. State Board of Elections